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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of

MUR 6284

DENHAM FOR CONGRESS

AND DAVID BAUER, AS TREASURER

JEFF DENHAM

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY SYSTEM

**SENSITIVE**

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are

forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6284 as a low-rated matter.

In this matter, the complainant, Shant Boyajian, asserts that Jeff Denham, a candidate for Congress from California's 19<sup>th</sup> Congressional District, and Denham for Congress and David Bauer, in his official capacity as treasurer ("the Committee"), aired campaign advertisements on television and on YouTube.com, entitled the "Bumper" video advertisements, that violated the disclaimer provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and underlying regulations. Specifically, according to the complainant, the communications failed to conclude with a written disclaimer, in violation of 2 U.S.C. § 441d(d) and 11 C.F.R. § 110.11(c)(3). Moreover, the complainant asserts that an "image of the candidate," which was allegedly included in the advertisements along with a "voice over" by Mr. Denham, failed to comprise at least 80% of the vertical screen height which, according to the complainant, is required by 11 C.F.R. § 110.11(c)(3)(ii)(B). Appended to the complaint are what appears to be

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1 screenshots from two of the Denham campaign's YouTube videos, including what seems to be a  
2 photograph of Mr. Denham comprising approximately 15% of the screenshot's vertical height.<sup>1</sup>

3 In response, the Committee's treasurer, David Bauer, apparently replying on behalf of  
4 Mr. Denham as well, maintains that the Committee's television advertisements, which were  
5 carried on both cable and broadcast networks, complied with the Act and regulations by  
6 including the requisite disclaimer "content." Mr. Bauer acknowledges, however, that the  
7 disclaimers were initially displayed at the beginning of the communications but were moved to  
8 the end within five days. As for the YouTube videos, Mr. Bauer takes the position that although  
9 they display disclaimers, these communications are not required to do so.

10 To the extent that the campaign advertisements at issue appeared on television,  
11 appropriate disclaimers were required, including written statements at the end of the messages,  
12 as set forth in 11 C.F.R. § 110.11(c)(3). Based upon the complaint and the response, it appears  
13 that some of the television advertisements may have lacked appropriate disclaimers, albeit for a  
14 brief period of time. However, given that they apparently included other identifying  
15 information, including the candidate's photograph and voice, it does not appear that the public  
16 would have been misled as to who paid for and approved the campaign advertisements.

17 Accordingly, in furtherance of the Commission's priorities and resources, relative to  
18 other matters pending on the Enforcement docket, the Office of General Counsel believes that  
19 the Commission should exercise its prosecutorial discretion and dismiss this matter. *See*  
20 *Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office intends on reminding  
21 Jeff Denham, and Denham for Congress and David Bauer, in his official capacity as treasurer,

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<sup>1</sup> We were unable to access links to the two purported YouTube videos that were provided in the complaint. After performing an Internet search, however, we were able to access a YouTube video entitled "Bumper," which includes an image of Mr. Denham comprising approximately 70-80% of the height of the screen, his oral statement approving the communication, and a printed disclaimer at the end of the video stating "Paid for by Denham for Congress." The video is available at <http://www.youtube.com/user/DenhamForCongress#p/u/0/lrMhgPOcO74>.

of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11 concerning the use of appropriate disclaimers on television advertisements made in connection with the campaign.

**RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission dismiss MUR 6284, close the file, and approve the appropriate letters. Additionally, this Office recommends reminding Jeff Denham, and Denham for Congress and David Bauer, in his official capacity as treasurer, of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11 concerning the use of appropriate disclaimers on television advertisements made in connection with the campaign.

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7/30/10

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